No. 86-337

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1986

BURLINGTON NORTHERN RAILROAD COMPANY,
Petitioner,

VS.

OKLAHOMA TAX COMMISSION, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals For the Tenth Circuit

BRIEF *AMICI CURIAE* OF FIFTY CALIFORNIA COUNTIES IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*

Amici comprise fifty California counties, each of which collects a property tax on railroad property within its borders. (A list of the *amici* will be found at Appendix "A", *infra.*) Each *amicus* is also a defendant in *Atchison T. & S.F. Ry. v. Board of Equalization*, 795 F.2d 1442 (9th Cir. 1986), in which numerous railroads have pressed valuation claims similar to those advanced by Petitioner in this action.[1] As Defendants in the *Atchison* litigation, *amici* are well-situated to apprise this Court of the difficulties and complexities inherent in overvaluation litigation. *See* pp. 26-27, *infra.*

If Petitioner's interpretation of the 4-R Act is accepted, a host of specialized and technical valuation issues—which intrude deeply into state tax administration and which involve no questions of federal law—will be litigated in the federal courts. Yet a careful examination of the legislative history of the Act reveals that neither Congress nor its railroad proponents intended to provide a federal forum for such claims. Indeed, Congress was assured by representatives of the railroads that overvaluation of railroad property was simply not a problem that required a federal legislative remedy. Petitioner's proposed interpretation of the Act ignores this legislative history and would effectively substitute the federal courts for state taxing authorities and the state courts. It is to prevent this result—and to avert years of complex and burdensome federal litigation over technical property valuation issues—that this brief *amici curiae* is filed.[2]

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[1] The Ninth Circuit ruled in the *Atchison* case that while Section 306 of the 4-R Act (now codified as 49 U.S.C. § 11503) permits a railroad plaintiff to bring a federal lawsuit contending that its property has been overvalued, the abstention doctrine prohibits the district courts from considering such claims in the first instance. Although a petition for rehearing is pending, the Ninth Circuit has formally deferred ruling on the petition until the decision in this case.

[2] Since no party to this case contends that a district court should abstain from considering overvaluation claims under the 4-R Act, this brief does not discuss the abstention issue raised by the Ninth Circuit's decision in *Atchison*. We urge the Court to avoid saying anything in its

SUMMARY OF ARGUMENT

This case turns on the issue of whether a statute passed to provide the railroads with one form of property tax relief—"equalization relief"—provides them as well with a means of securing "valuation relief." By "equalization relief," we mean lowering the assessed value of a railroad's property so that the ratio between that value and the railroad's true market value (as determined by the appropriate state taxing authorities under state law) is no greater than the comparable ratio between the true market value and the assessed value of "other commercial and industrial property." By "valuation relief," we mean the asserted right of a railroad to challenge in federal court the State's determination of its true market value. These two forms of relief are fundamentally different; indeed, Congress and the railroads themselves distinguished between them in drafting, sponsoring and passing the 4-R Act.[3]

The legislative history of the Act is filled with compelling evidence that state and local governments had discriminated against railroad property by subjecting it to a higher assessment ratio than that applied to property owned by other commercial and industrial users. In passing Section 306, Congress provided equalization relief—by requiring that the assessed values of railroad "transportation property" be reduced, on an across-the-board basis, if necessary to achieve an assessment ratio no greater than the assessment ratio for "other commercial and industrial

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decision in this case that would pretermit further consideration of this question.

[3] The United States as *amicus curiae* uses the term "undervaluation claim" to refer to a request for equalization relief, no doubt in order to bolster its contention that equalization is merely the mirror image of overvaluation. Brief for the United States as *Amicus Curiae* in Support of Petitioner (hereafter "U.S. Br.") 5. While the United States contends that the term "equalization relief" is "confusing" (*id.*), we use the phrase for two reasons: (1) "equalization" has a well-established technical meaning (*see Black's Law Dictionary* 481 (5th ed. 1979)); and (2) terms such as "equalization," and "equalizing assessments" were used throughout the legislative history of the 4-R Act. *See* pp. 12-18, and notes 14, 15, *infra*.

property." Congress also provided the means by which this comparison would be made: a sales assessment ratio study which would yield the percentage factor applied to reduce—to "equalize"—the assessed values of the railroads' properties.[4]

The grievances Petitioner presses in this case—and the relief that it seeks—are profoundly different from the assessment equalization which Congress intended to provide when it passed the 4-R Act. Equalization relief can be afforded without undue disruption of a State's tax collection process by simply performing a sales assessment ratio study and reducing the railroad's tax bill by the appropriate percentage; thus, a federal court may grant equalization relief without intruding into the details of a State's valuation practices. In contrast, a grant of valuation relief would require the federal courts to resolve scores of highly technical challenges to virtually every aspect of a state assessor's valuation methodology. Permitting railroads to challenge their state property tax valuations in federal court would work a radical shift in an area of fundamental importance to state and local governments across the Nation, as well as imposing a new and burdensome task on the federal judiciary.

Given the concerns that such a statute would raise, one would expect that if Congress contemplated so radical a change in the role of the federal judiciary: (1) the statute would say so in unmistakable terms; (2) the legislative history would demonstrate a strong need, perceived by Congress, for federal oversight of the States' valuation of railroad property; and (3) that history would also reflect a genuine appreciation by Congress of the task it was assigning to the federal judiciary. None of these is the case.

This brief will demonstrate four things. *First,* the language of Section 306 does *not* state in unmistakable terms—or, indeed, in *any* terms at all—that federal courts should review state determinations of the true market value of railroad property. To the

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[4] For example, in the *Atchison* case, the district court found that "other commercial and industrial property" was assessed at 59.6% of its true market value, and entered a preliminary injunction requiring that railroad property taxes be reduced by 40.4%.

contrary, the language of the statute mandates equalization relief and nothing more. *See* Part I(A), *infra.*

Second, Congress was told repeatedly by the railroad proponents of the 4-R Act that the problem which it should remedy was the underassessment of other property in relation to railroad property and the failure of the States to provide relief from such underassessments, *i.e.,* equalization relief. *See* Part I(B)(1), *infra.* Moreover, the Act's supporters also told Congress that inaccurate determination by the States of the true market value of railroad property was simply not a problem. Indeed, Congress was repeatedly assured that the proposed legislation was concerned only with equalization and would not extend to overvaluation claims. *See* Part I(B)(2), *infra.*

Third, interpreting the 4-R Act in the manner suggested by Petitioner and its *amici* would impose novel and heavy burdens on the federal courts. In contrast to a claim for equalization relief, an overvaluation claim requires a court to second-guess determinations made by state taxing authorities in a complex, specialized area which necessarily involves the making of individualized judgments. The claims in the *Atchison* case vividly illustrate the difficult and burdensome fact-finding which federal courts would be required to undertake if the 4-R Act is interpreted to provide a federal forum for overvaluation claims. *See* Part II, *infra.*

Fourth, doubtless recognizing that Petitioner's interpretation of Section 306 would expose the federal courts to a host of railroad overvaluation suits, the Tenth Circuit and the Solicitor General have each suggested limitations on the availability of federal relief. However, these efforts to limit the burden which Petitioner's interpretation of the 4-R Act undoubtedly would impose on the federal courts find no support in either the statute's language or its legislative history. Instead of adopting either approach, this Court should interpret the 4-R Act in accordance with the contemporaneous understanding of its railroad proponents: to provide a federal remedy for equalization claims, but not for claims based on overvaluation. *See* Part III, *infra.*

ARGUMENT

I

THE 4-R ACT DOES NOT EMPOWER FEDERAL COURTS TO REDETERMINE THE TRUE MARKET VALUE OF RAILROAD PROPERTY

A. The Language Of The Statute Does Not Support Federal Court Jurisdiction To Redetermine The True Market Value Of Railroad Property

Although Petitioner and its *amici* repeatedly assert that the "plain language" of Section 306 requires review of valuation claims (*see, e.g.,* Pet. Br. 16-20; U.S. Br. 13-15), in fact the statute nowhere directs federal courts to entertain such lawsuits. By its terms, the 4-R Act regulates only the determination by a State of the *assessed value* of railroad property, by providing that the ratio of that value to the true market value shall be no greater than the comparable ratio for "other commercial and industrial property." The 4-R Act does not set parameters for the State's determination of true market value—as it does with respect to assessed value—nor does it regulate the means by which railroad property true market value shall be determined. Thus, the plain language of the statute suggests that Congress did not intend to provide for federal review of a State's determination of true market value, as opposed to its derivation of assessed value.

This conclusion is reinforced by subsection 2(e) of Section 306. In that provision, Congress specified the manner in which federal courts should ordinarily determine the ratio between assessed and true market value for "other commercial and industrial property": by means of a sales assessment ratio study. A sales assessment ratio study compares the assessed value to the actual sales price for a representative and statistically valid sample of properties within the assessment jurisdiction which have been sold, to derive the degree to which property has been under- (or over-) assessed. Because railroad property is sold too infrequently to generate statistically reliable sale price data, such a study cannot be used to determine *its* true market value. Thus, the 4-R Act says nothing about the means by which a federal court should determine the true market value of railroad property.

By the time the plaintiff in an equalization case brings a claim in federal court, determinations of the assessed and true market value of its property necessarily will have been made by the State. Yet Congress did not direct the federal courts to redetermine the State's true market valuation of railroad property. Nor did it give any direction as to how such redeterminations would be accomplished. The congressional silence on these important issues stands in sharp contrast to Congress' very specific reference to the use of sales assessment ratio studies for "other commercial and industrial property"—and is strong evidence that Congress simply never intended the federal courts to perform railroad property revaluations under the aegis of the 4-R Act.[5]

Petitioner's "plain language" argument rests entirely upon inferences from the language of the statute, and weak ones at that. It relies on two statutory phrases: (1) the language in Section 306(2)(d) which provides that "[t]he burden of proof with respect to the determination of assessed value and true

[5] Petitioner and the United States as *amicus* attempt to rebut this argument by asserting that while Congress had to prescribe a means of determining the assessment ratio for "non-railroad commercial and industrial property"—because the task of determining true market value for all this property "is a formidable one"—no such legislative direction was necessary for determining the true market value of railroad property. Pet. Br. 19; *see also* U.S. Br. 14. Since "states commonly value railroad property by the 'unit method' . . . there was . . . little need for Congress to designate in Section 306 permissible methods for calculating the market value of a railroad's holdings in a state." *Id.* at 14-15.

This argument fails because its major premise is simply wrong. Determining the true market value of railroad property is, if anything, more complex and open to debate than equalizing two classes of property by means of a sales assessment ratio study. The facile generalizations regarding the unitary method contained in the briefs of Petitioner and the United States obscure layers of complexity. Within the general rubric of "unitary valuation," States employ a huge variety of methodologies, almost all of which are necessarily subjective. *See* pp. 25-26, *infra*. Thus, the failure of Congress to give guidance as to how to determine the true market value of railroad property is strong evidence that Congress did not intend to require the courts to make independent redeterminations of the States' conclusions.

market value shall be that declared by the applicable State law"; and (2) the proscription in Section 306(1)(d) forbidding the States from levying other taxes that discriminate against rail carriers. Neither of these snippets from the statute, taken either separately or together, support Petitioner's reading of Section 306.

In the first place, the language in Section 306(2)(d) that refers to burden of proof is hardly conclusive. Under *any* construction of the statute, a railroad plaintiff must prove the true market value of "other commercial and industrial property," which the statute provides shall usually be accomplished by means of a sales assessment ratio study. For this reason, Petitioner's argument that "there would have been no reason for Congress to prescribe a burden of proof" if a federal court could not redetermine railroad property true market value (Pet. Br. 18) is simply incorrect. There is no reason to infer that the language relating to burden of proof in Section 306(2)(d) refers to anything *other* than commercial or industrial property or to believe that by such indirect means Congress meant to authorize the *de novo* redetermination by a federal court of the true market value of railroad property.[6]

[6] This reading of the statute is confirmed by language from the Senate committee report on the bill which Congress finally enacted. There, in the course of describing the judicial review available under the 4-R Act, the committee stated:

> "[I]n order for relief to be granted under this section, the transportation property must be assessed at a ratio at least 5 per cent above that applied to all other commercial and industrial property. The burden of proof with respect to the determination of assessed value and true market value is determined by the State law, and where the ratios cannot be established to the satisfaction of the Court through a sales assessment ratio study, the Court is directed to hold certain assessments unlawful." (S. Rep. No. 499, 94th Cong., 1st Sess. 65, *reprinted in* 1976 U.S. Code Cong. & Admin. News 14, 80)

This description of the judicial relief provision in Section 306 supports two important inferences, neither of which helps Petitioner. First, this language clearly implies that the "ratios" which a federal court must "establish" (*i.e.*, redetermine) under the 4-R Act are only those applicable to "other commercial and industrial property," since they are the only ones that can be ascertained through a sales assessment ratio

Nor is Petitioner aided by the language of Section 306(1)(d), which forbids state and local taxing authorities from imposing "any other tax which results in discriminatory treatment of a common carrier" subject to the Act. This provision plainly does not extend to the property tax, as the Act's structure demonstrates. Section 306(1) defines the four types of acts prohibited by the statute. The first three of these, expressed in subsections (1)(a), (1)(b) and (1)(c), all pertain to discriminatory *property tax* procedures (*i.e.*, discriminatory assessment, collection or rates). Subsection (1)(d) then prohibits *other* discriminatory taxes. This section was plainly intended to reach taxes other than conventional real property taxes.[7] Subsection (1)(d) has no bearing on whether Section 306 provides a federal forum for claims of property tax overvaluation.

Even were the statutory language clearer than it is, this Court should not base its interpretation of Section 306 on the isolated phrases relied on by Petitioner. As the Court has twice recently stated, "[i]n expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." *Kelly v. Robinson*, ___ U.S. ___, 93 L.Ed.2d 216, 225 (1986) (quoting *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. ___, 91 L.Ed.2d 174, 188 (1986)). Such concerns are especially relevant in this case, for "determinations about federal jurisdiction require sensitive judgments about congressional intent, judicial power, and the federal system." *Merrell Dow Pharmaceuticals, Inc. v. Thompson*,

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study or, in the alternative, through the fall-back provision contained in the statute (which by its terms is only applicable to "other commercial and industrial property"). Second, by treating burden of proof together with determination of the assessment ratio through a sales assessment ratio study, the language implies that the provision defining the burden of proof applies only to the determination of the market value and assessed value for "other commercial and industrial property."

[7] *Alabama Great S. R.R. v. Eagerton*, 663 F.2d 1036 (11th Cir. 1981) (license or gross receipts taxes); *Ogilvie v. State Bd. of Equalization*, 492 F. Supp. 446, 454 (D.N. Dak. 1980), *aff'd*, 657 F.2d 204 (8th Cir.), *cert. denied*, 454 U.S. 1086 (1981) (*ad valorem* personal property taxes); *Richmond, F. & P. R.R. v. Department of Taxation*, 762 F.2d 375 (4th Cir. 1985) (corporate net income tax).

___ U.S. ___, 92 L.Ed.2d 650, 659 (1986). Indeed, as the Court stressed in *Merrell Dow*, "[i]f the history of the interpretation of judiciary legislation teaches us anything, it teaches the duty to reject treating such statutes as a wooden set of self-sufficient words." *Id.* (quoting *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 379 (1959)).

Thus, the language of the 4-Act cannot, by itself, be dispositive. To the contrary, like 28 U.S.C. § 1331, the general federal question statute, the 4-R Act's grant of federal jurisdiction must be "construed and limited in the light of the history that produced it, the demands of reason and coherence, and the dictates of sound judicial policy which have emerged from the Act's function as a provision in the mosaic of federal judiciary legislation." *Romero, supra*, 358 U.S. at 379. As we shall now demonstrate, these factors compel the conclusion that the 4-Act does not provide a federal forum for resolving claims of overvaluation.

B. The Legislative History Of The 4-R Act Demonstrates That Congress Intended To Provide For Equalization Relief, But Not To Empower Federal Courts To Redetermine The True Market Value Of Railroad Property

1. The Legislative History Of The Act Demonstrates That It Was Primarily Intended To Remedy Discriminatory Assessment Ratios And Tax Rates Affecting Railroad Property

In enacting Section 306, Congress sought to prohibit two forms of discriminatory property tax treatment of railroad property, each of which is proscribed by explicit statutory language. *First*, Congress sought to proscribe the long-established practice of assessing railroad property at a higher ratio of its state-determined true market value than was true for other commercial and industrial property. *Second*, Congress attempted to remedy the use by the States of a higher tax rate for railroad property than that applied to the assessed value of comparable property owned by other businesses. The 4-R Act's legislative history demonstrates that these were the only forms of property tax related discrimination proscribed by the Act.

Legislative concern with the States' failure to equalize assessment ratios between railroad and other commercial and industrial

property long predated the passage of the 4-R Act. While Petitioner traces the 4-R Act back to 1961 (Pet. Br. 22), congressional concern over railroad taxation in fact extends back to 1940, when Congress created a Board of Investigation and Research to report, *inter alia*, on "the extent to which taxes are imposed" upon railroad carriers, water carriers and motor carriers. Transportation Act of 1940, Pub. L. No. 76-785, 54 Stat. 898, 953, § 302(a)(3) (1940). In 1944, in response to this congressional mandate, the Board submitted a lengthy analysis of "carrier taxation" to the House of Representatives. The Board found, *inter alia*, that "officials of approximately half the States readily concede that railroads are being overtaxed because of inadequate equalization." Carrier Taxation: House Comm. on Interstate and Foreign Commerce, Letter from the Board of Investigation and Research transmitting a Report on Carrier Taxation, H. Doc. No. 160, 79th Cong., 1st Sess. 124 (1944). Moreover, the States' failure to equalize the assessment ratios for railroad and other property was highlighted by the Board's Report as the railroads' most serious problem. "If we accept the standards of equity set forth in present tax laws, this failure to equalize State and local assessments is probably the most significant of the railroad tax grievances." *Id.* at 125. While these findings did not produce immediate legislative action, they were repeatedly cited in the legislative debates that led to adoption of the 4-R Act.[8]

The "Doyle Report,"[9] issued in 1961, contained similar findings. Although the Report described some of the problems

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[8] *See, e.g.*, S. Rep. No. 1483, 90th Cong., 2d Sess. 3 (1968) (hereafter "S. Rep. No. 1483"); *Tax Assessments on Common Carrier Property: Hearings on H.R. 4972 Before the House Comm. on Interstate and Foreign Commerce*, 89th Cong., 2d Sess. 12 (1966) (testimony of James N. Ogden on behalf of the Association of American Railroads); *Discriminatory Taxation of Common Carriers: Hearings on S. 927 Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce*, 90th Cong., 1st Sess. 56 (1967) (hereafter "*Hearings on S. 927*") (testimony of Broley E. Travis); S. Rep. No. 630, 91st Cong., 1st Sess. 4 (1969) (hereafter "S. Rep. No. 630").

[9] S. Rep. No. 445, 87th Cong., 1st Sess. (1961) (hereafter "Doyle Report"). The Report, over 700 pages in length, was prepared under the direction of Major General John P. Doyle, pursuant to three Senate resolutions passed in the 86th Congress.

inherent in valuing railroads,[10] its treatment of railroad tax discrimination focused on equalization, largely at the behest of the railroads themselves. The Report stated that the Association of American Railroads (AAR) had been asked "to submit any pertinent information available on relative tax discrimination in the matter of State and local taxes." Doyle Report at 458. In response, the AAR told General Doyle's committee that while the data it had compiled "showed a number of separate and, in many cases, different types of obvious discrimination against railroads in the matter of State and local taxation, one clear and distinct pattern or plan of discrimination predominated; namely, the studied and deliberate practice of assessing railroad property at a proportion of full value substantially higher than other property subject to the same tax rates." *Id.* at 486. The Doyle Report echoed this conclusion in its own findings. *Id.* at 458. Like the similar finding in the 1944 Board of Inquiry report, the Doyle Report's conclusion that inadequate equalization was widespread was cited throughout the legislative history leading to the passage of the 4-R Act.[11]

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[10] For example, the Report noted that state assessors had "sometimes" used historical cost data as a basis for valuing railroad property, as opposed to capitalized earnings or the value of stock and debt, in order to obtain a higher valuation "than current cash value." *Id.* at 456-57. But the Report did not indicate that this practice was widespread, or that it resulted in systematic or pervasive overvaluation of railroad property. To the contrary, the Doyle Report found that central assessments (like those of railroad property) came closer to true market value than the local assessments of other property. *Id.* at 454. That no doubt explains why the drafters of the Doyle Report recommended a federal remedy to provide equalization relief but never suggested that the legislation they proposed—which ultimately became the 4-R Act—would provide federal valuation review.

[11] As Petitioner correctly observes, the Doyle Report was cited frequently throughout the hearings, debates and reports leading to enactment of the 4-R Act. Pet. Br. 23 n.33. But the references cited by Petitioner refer either to discriminatory equalization or tax rates or the amount of discriminatory taxes annually collected from the railroads. To

The Doyle Report's findings with respect to inadequate equalization—and its adoption of the railroad industry's recommendation that anti-discrimination legislation be enacted[12]—set the stage for a fifteen-year long debate over the propriety of federal tax relief for the railroads. During the course of this debate, the railroad proponents of the Act specifically identified inadequate equalization of assessment ratios as the central evil they sought to eradicate. In 1967, for example, James N. Ogden, appearing on behalf of the AAR, informed a Senate subcommittee that because the "critical step" in the assessment process was "to determine how much of the valuation that has been found should be assessed," the problem facing the railroads was "how to persuade tax assessors to equalize the railroads' assessment with that of other property in the same taxing district." *Hearings on S. 927* at 23. Two years later, another witness for the railroads told the same subcommittee that tax discrimination against railroads was "due to the practice of assessing railroad property at percentages of full value much higher than most other property that is subject to the same tax rate."[13] In light of such statements, which were echoed throughout the Act's legislative history,[14] it is not

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our knowledge, the Doyle Report's discussion of the *valuation* problems inherent in taxing railroad property—as distinct from its discussion of equalization—was *never* cited during the fifteen years between issuance of the Report and passage of the 4-R Act.

[12] The Doyle Report noted that the anti-discrimination legislation it proposed as an alternative to removing railroad rights-of-way from the tax rolls altogether had been suggested by the Association of American Railroads. Doyle Report at 465.

[13] *State Tax Discrimination Against Interstate Carrier Property: Hearings on S. 2289 Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce*, 91st Cong., 1st Sess. 55 (1968) (statement of Broley E. Travis) (hereafter "*Hearings on S. 2289*").

[14] *See, e.g., Hearings on S. 927* at 54 (statement of Dr. Harold M. Groves, on behalf of railroads, that most discrimination against railroads arises from "imperfections in the equalization features of property tax laws"); *Hearings on S. 2289* at 62-63 (1969) (statement of Rolf A. Weil on behalf of the railroads that tax discrimination is due to inadequate equalization of centrally assessed property to locally assessed property).

surprising that the Act's proponents repeatedly described its purpose as equalizing assessments.[15]

Indeed, Congress was explicitly told that the application of discriminatory assessment ratios and differential tax rates were the *only* forms of discrimination it need redress.[16] Thus, in 1969, Philip Lanier, appearing on behalf of the AAR (*see Hearings on S. 2289* at 5), described the evils which the railroads sought to remedy as follows:

> "The discrimination, however, of which we complain at the moment, *lies always in two forms*. Most often it is in the application of an equalization ratio to the actual value of the property. This simply means that having computed the actual cash value of the property the assessor will apply a debasing figure to it. This is called the equalization ratio.
>
> "It is often different for railroads than for property generally. To describe it for the record, the property of a railroad is assessed at actual cash value, I should say, that actual cash value would be equalized at 60 percent. Property generally valued at actual cash value would be equalized at say 40 percent.

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[15] *See, e.g., Surface Transportation Legislation: Hearings on H.R. 12891 [and related bills] Before the House Comm. on Interstate and Foreign Commerce and the Subcomm. on Transportation and Aeronautics*, 93d Cong., 2d Sess. 347 (1974) (statement of Chairman of ICC that proposed legislation would "equalize assessments and ad valorem rates"); *Railroad Revitalization: Hearings on H.R. 6351 and H.R. 7681 Before the Subcomm. on Transportation and Commerce of the House Comm. on Interstate and Foreign Commerce*, 94th Cong., 1st Sess. 299 (1975) (same).

[16] The Doyle Report had not found that railroad property was subjected to discriminatory tax rates and, accordingly, did not propose to outlaw rate differentials. *See* Doyle Report at 465. Neither did the early predecessors of Section 306 address this issue. *See, e.g.*, H.R. 736, 88th Cong., 1st Sess. (1963); H.R. 4972, 89th Cong., 1st Sess. (1965). Coverage of discriminatory tax rates was added to the proposed legislation beginning with S. 927 in 1967. Railroad industry spokesmen testified that this form of discrimination occurred "[l]ess often" than did inadequate equalization. *Hearings on S. 2289* at 34.

* * * * *

> "Less often we find a discrimination in the tax rate itself. This simply means that a higher tax rate will deliberately be applied to a railroad or public utility property than is applied to property generally." (*Id.* at 33-34 (emphasis added))

These descriptions of the evils sought to be remedied by the proposed legislation were not lost on Congress. The two committee reports addressing the predecessors of Section 306 indicate quite clearly that Congress precisely identified the two particular sources of railroad property tax discrimination described by Mr. Lanier—higher assessment ratios and higher tax rates—and intended to proscribe them both. Thus, the committee stated:

> "Since local property taxes are calculated by multiplying tax assessments times the tax rates, *discriminatory taxation can arise in two ways*: First, railroad and other carrier transportation property may be assessed at a substantially higher proportion of true market value than the proportion of true market value at which other property is assessed. Second, railroad and other carrier transportation property may be subject to a higher tax rate than the tax rate for the same purpose applied against other taxable property. . . . Either way, a railroad can be forced to pay higher discriminatory taxes than other taxpayers with similar property in the same taxing district." (S. Rep. No. 1483 at 3 (emphasis added))[17]

Thus, the legislative history of the 4-R Act reveals that the railroads came to Congress with a clearly-defined problem: discrimination resulting from the under-assessment of other commercial and industrial property in comparison to their own, and the lack of adequate equalization relief. Indeed, railroad spokesmen told Congress that inadequate equalization, coupled with the less prevalent practice of discriminatory tax rates, were the *only* forms of property tax-related discrimination that it sought to redress. Congress responded by passing a statute which it described in numerous committee reports as addressing these two problems: discriminatory assessment ratios and tax rates.

[17] *See also* S. Rep. No. 630 at 3. Numerous other descriptions of the Act and its predecessors similarly indicate that it was intended to redress only the imposition of discriminatory assessments and tax rates. *See, e.g., Hearings on H.R. 6351 and H.R. 7681* at 162-63 (statement of Secretary of Transportation Coleman that bill "would prevent discrimination in assessing the property of interstate carriers and in establishing tax rates for such property"); *Surface Transportation Legislation: Hearings on S. 2362 [and related bills] Before the Subcomm. on Surface Transportation of the Senate Comm. on Commerce*, 92d Cong., 2d Sess 411-13 (1972).

Of course, the fact that Congress focused exclusively on these two evils would not necessarily restrict the statute's reach, if a broader construction were necessary to effectuate the 4-R Act's purpose. But the legislative history of the Act reveals far more than legislative inattention to the question of valuation. In fact, the Act's proponents informed Congress, first, that overvaluation of railroad property was not a problem that needed federal legislation and, second, that the legislation they sought would not provide a remedy in federal court for overvaluation claims.

2. The Legislative History Of The Act Demonstrates That Its Railroad Proponents Explicitly Informed Congress That Overvaluation Of Railroad Property Was Not A Problem That Needed To Be Redressed By Federal Legislation And That The Legislation They Proposed Would Not Afford A Federal Remedy For Overvaluation

The legislative debates leading to adoption of the 4-R Act were not monopolized by representatives of the railroad industry. During Senate and House committee hearings on the predecessors to Section 306, federal government agencies and other witnesses—many of whom spoke in opposition to the proposed legislation—alerted the committees that the bills might be used as a means of challenging state methods of valuing railroad property in federal court, and pointed out that creating such a remedy would burden the federal courts, intrude on state sovereignty, and cause a conflict between federal valuation proceedings and state tax administration.[18]

[18] *See, e.g., Tax Assessments on Common Carrier Property: Hearing on H.R. 736 and H.R. 10169 Before the Subcomm. on Transportation*

Legislators, obviously concerned, asked representatives of the railroads whether the legislation would require or authorize federal court review of state property tax valuations or valuation methodologies.[19] In response to these inquiries, railroad industry spokesmen repeatedly *denied* that the bills would subject state property tax valuations to federal court review and assured the legislature that its only purpose was to ensure that the States assessed rail transportation property at the same percentage of true market value (as determined by the appropriate state agency) as they assessed other comparable property.

The railroads' response on this point had two components. First, their spokesmen assured Congress that the railroads were generally satisfied with the means employed by the States to value their property. In 1964, for example, three years after issuance of the Doyle Report, the AAR's spokesman (James N. Ogden) told a House subcommittee:

> "The principal problem in the manner of railroad assessments is *not* one of how to valuate a railroad. In the hundred year history of railroad taxation, the practice of valuing railroads for tax purposes has reached a substantial degree of refinement. Though not as simple as valuing a one-family dwelling, the method is neither incomprehensible nor even overly complicated. And it should be remembered that no greater effort is required to assess a railroad fairly and reasonably than is required to assess one unfairly and unreasonably. The real problem is to determine how much of the valuation that has been found should be assessed, which, in turn, depends upon how much of the valuation of other

and Aeronautics of the House Comm. on Interstate and Foreign Commerce, 88th Cong., 2d Sess. 2-3 (1964) (hereafter "*Hearing on H.R. 736 and H.R. 10169*"); *id.* at 5; *Hearings on S. 927* at 87.

[19] *See, e.g., Hearings on S. 2289* at 59 (statement of Senator Hansen); *Common and Contract Carrier State Property Tax Discrimination: Hearing on H.R. 16245 [and related bills] Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce*, 91st Cong., 2d Sess. 138-39 (1970) (hereafter "*Hearing on H.R. 16245*") (statement of Representative Adams). *See also* S. Rep. No. 1483 at 26 (individual views of Senator Lausche).

> property is assessed. In other words, the problem is how to get the tax assessors in the several States to equalize the railroad's assessment with that of other property in the same taxing district." (*Hearing on H.R. 736 and H.R. 10169* at 18-19)

Similarly, Mr. Ogden's successor as spokesman for the AAR, Philip Lanier, told Congress five years later that "[t]he [valuation] formula varies from State to State and we are not dealing with the valuation question. This is not our problem. We speak only of the equalization of the tax rate." *Hearings on S. 2289* at 39.

Second, spokesmen for the railroad industry also told the Congress that since overvaluation was "not our problem," the legislation they sponsored would not provide a federal remedy for it. For example, Representative Adams, during hearings before a House subcommittee, noted that there were important differences between a strip of railroad track running through a town and a strip of lots with houses on them and asked Mr. Lanier what effect the proposed legislation would have on a State's valuation of such properties. Lanier replied:

> "On the valuation—*this bill would not deal with valuation being standard. The standards and methods of valuation that any State wishes to use would be totally unaffected by this legislation.* . . .
>
> "[F]or valuation purposes . . . different uses do require different methods of valuation. . . .
>
> "And that is appropriate because it is the way to get at the real value. There is nothing in this legislation—and we have no brief here to alter that—*it is only in the area of equalization of the computed value that this legislation speaks.* That is where our problem is." (*Hearing on H.R. 16245* at 138-39 (emphasis added))

Representative Adams suggested to Lanier that the language of the bills referred both to valuation and assessment. Lanier replied:

> *"Without regard to this legislation, assuming it is enacted, without regard to it the assessing authority for the railroads puts a value—a fair market value, true market value, the*

words mean the same—on that railroad property and the local assessor in the towns you refer to puts a true market value on the residences. After that is done, this bill would come into play." (*Id.* at 139 (emphasis added))

Representative Adams persisted:

"But that help could not—if, for example, vacant property in that area with no buildings on it was assessed at, we will say, 100 by 100 lot, it would be assessed at $5,000—. . . if your railroad property was assessed at more than that, under this bill—this is what I'm asking you—I think you probably would have an automatic lawsuit that would say the value of a piece of property with two rails on it and no other improvements should not be any higher than either vacant property plus the value of the rails." (*Id.*)

Lanier replied:

"Let us assume that the vacant lot is assessed at $5,000. That is the fair market value of that lot. Now, in Washington the equalization ratio is 50 percent. . . . so that that vacant lot actually carries a tax on $2,500. Now let us assume that a portion of the right-of-way of the railroad equivalent in area in that town to the vacant lot carries a value, fair market value *determined by the State assessing authority* of $20,000, if it is equalized at 50 percent, the tax goes against only $10,000. *That is all this bill requires, and that is all we ask for.*

"Because we are speaking in terms of *uniformity of the equalization ratio, not uniformity of the result in dollars of value or in dollars of tax, but only that once the fair market value is determined, the equalization ratio will be the same.* And since you would have a 50 percent ratio in each instance, [*i.e.*, without regard to the correctness of the valuation in each instance] we would have absolutely no complaint and no grounds for complaint." (*Id.* (emphasis added))

The other participants in the hearings understood the railroad industry's interpretation of the proposed statute and responded accordingly. In 1969, for example, the Multistate Tax Commission, which had "participated in extensive discussions [with] representatives of the railroad industry . . . for the purpose of seeking areas of agreement," sent a resolution to the Senate subcommittee considering railroad tax legislation which set forth the Commission's understanding that "[i]n view of the stated position of the carriers that they have never supported the bill in the hopes of using it to bring a pure valuation case in the federal courts, the question of true market value of carrier property should not be a subject for federal court action under the bill." *Hearings on S. 2289* at 111 (statement of Multistate Tax Commission).[20] Additional examples are set forth below.[21]

What the railroad proponents of the Act said about its meaning also served as the basis for Congress' own interpretation of the statute. In 1967, for example, the railroads assured Congress that the proposed legislation would not interfere with state valuation practices:

"Let me emphasize that S. 927 does not suggest or require a State to change its assessment standards, assessment practices, or the assessments themselves. It merely provides a single standard against which all affected assessments must be measured in order to determine their relationship to each other. *It is not a standard for determining value; it is a standard to which values that have already been determined*

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[20] The same statement was supplied in 1970 to the relevant House committee. *Hearing on H.R. 16245* at 113 (statement of Multistate Tax Commission).

[21] In 1970, the chief counsel of the California State Board of Equalization wrote after hearing testimony from the bill's railroad proponents that "[i]t . . . appeared to me that what the railroads were saying is that they wanted to have discriminatory assessment ratio practices struck down by the federal courts and that it was not their intention to intrude the federal courts into fact adjudication as to the true market value of railroad property and locally assessed property for the purpose of assessing." *Hearing on H.R. 16245* at 93. *See also Hearings on S. 2362* at 1260 (statement of Houston I. Flournoy).

must be compared." (*Hearings on S. 927* at 29 (emphasis added) (statement of James N. Ogden))[22]

Almost identical language reappeared in the Senate committee report on the same statute. "In order to avoid any question as to the meaning of the phrase 'true market value'" as used in the statute, the committee included in its report an appendix ("Appendix B") and specifically stated that the committee intended "by the phrase 'true market value' the meaning set forth in [that] appendix." S. Rep. No. 1483 at 10. Appendix B set forth in no uncertain terms the limited effect which the statute would have on state valuation practices, in language similar to that used by the statute's railroad proponents:

> "S. 927 does not suggest or require a state to change its assessment standards, assessment practices, or the assessments themselves. It merely provides a single standard against which all affected assessments must be measured in order to determine their relationship to each other. It is not a standard for determining value; it is a standard to which values that have already been determined must be compared." (*Id.* at 22)

Similar language appeared in a Senate report issued two years later. S. Rep. No. 630 at 25-26.[23]

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[22] A similar statement was made during the 1964 hearings. *See Hearing on H.R. 736 and H.R. 10169* at 49, 51-52.

[23] The United States tries to minimize the importance of these congressional reports by claiming that Section 306 has a broader impact on state assessment practices than did the earlier proposed legislation. U.S. Br. 17. It first relies on the fact that Section 306(1)(d), unlike the earlier bills, prohibits discrimination based on taxes other than property taxes. *Id.* The United States also points to the elimination from the Senate version of Section 306 of a provision that would have permitted differential classification of property for state tax purposes if the classification was set forth in the state constitution. *Id.* at 21.

Neither fact is even remotely relevant to the weight to be given the committee reports cited in text. Subsection (1)(d), which prohibits the discriminatory application of taxes *other than property taxes*, is simply irrelevant to the issue of what forms of *property tax* discrimination Congress sought to proscribe. *See* p. 8, *supra*. Moreover, the fact that later versions of Section 306 contained an exception for discrimination prescribed in state constitutions has no bearing on interpreting two committee reports that endorsed statutes that, like the enacted version of Section 306, did *not* contain such an exception.

The plain fact is that the bills endorsed by the Senate reports cited in text are identical in all relevant respects to the legislation which Congress later enacted. Those committee reports are thus strong evidence of congressional intent in passing the 4-R Act. Indeed, even the United States realizes as much, because it describes one of the two Senate reports cited here in text as "a key committee report" only one page prior to its attempt to distinguish the very same document as of "dubious relevance to the law as enacted." *Compare* U.S. Br. 16 with *id.* at 17.

The United States also attempts to extract a favorable interpretation from the language quoted in text, relying on the phrase that "true market value" is "a standard to which values that have already been determined must be compared." U.S. Br. 18. But this language came directly from the railroad lobbyists themselves, who expressly advised Congress that the bill would not require federal review of railroad property valuations. *See* pp. 19-20, *supra*.

[24] The AAR can hardly have forgotten its representations to Congress, particularly inasmuch as its brief *amicus curiae* in this case states that it "participated extensively in the legislative process resulting in the enactment of Section 306. . . ." AAR Motion for Leave to File at 4. Yet its brief altogether fails to mention, let alone to explain away, the statements made to Congress by its spokesmen. One may admire the audacity, but not the candor, of the AAR, which told Congress that

The foregoing legislative history demonstrates unequivocally that the railroad proponents of the 4-R Act—who first suggested the legislation to the committee preparing the Doyle Report, who championed it at every hearing during the fifteen years leading to the Act's passage, and who were the primary beneficiaries of the Act—told Congress on numerous occasions that overvaluation of railroad property by state taxing authorities was not a problem that needed to be redressed by federal legislation. They also told Congress, in a strategic response to allay the concerns of the Act's opponents, that the legislation they were proposing would not provide for valuation relief. Yet Petitioner and its *amici* now contend that this legislative history should be ignored. We shall discuss why these arguments are in error in the next section.[24]

3. The Statements Relied On By Petitioner And Its *Amici* Are Not A Reliable Guide To The 4-R Act's Meaning

Petitioner and its *amici* offer four reasons why this Court should not be guided by the legislative history described above, each of which we discuss in turn.

1. Petitioner and its *amici* seize upon statements in the early committee hearings by representatives of two federal agencies expressing concern that the bill could embroil the federal courts in review of state valuations of railroad property. Pet. Br. 23-24; U.S. Br. 15-16. But, as noted above, it was these very expressions of concern which alerted Congress to the potential problems caused by federal valuation review and which prompted committee members to question railroad lobbyists about the scope of the proposed bill. This, in turn, led to their repeated assurances to congressional committees that the bill was only addressed to inadequate equalization, and would not involve the federal courts in determination of rail property values or valuation methodologies. *See* pp. 16-18, *supra*. Once these assurances were given, no responsible federal official ever again claimed that the proposed legislation would provide relief for railroad property overvaluation.

Later on in the legislative process, the Act's opponents (primarily state taxing officials) similarly contended that the proposed statute would require federal valuation review. *See, e.g.*, Pet. Br. 25 n.38 (citing eight statements). But as the Court has repeatedly made clear, such "statements are entitled to little, if any, weight, since they were made by opponents of the legislation." *Selective Service System v. Minnesota Public Interest Research Group*, 468 U.S. 841, 855 n.15 (1984). The rationale for this rule is simple: "[i]n their zeal to defeat a bill, [its opponents] understandably tend to overstate its reach." *National Woodwork Manufacturers Association v. NLRB*, 386 U.S. 612, 639-40 (1967). That is precisely what occurred here, as some state taxing authorities sought to marshal opposition to the legislation by pointing to the

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overvaluation of railroad property was not a problem and that the legislation it sought would not create a federal forum for valuation claims, and now tells this Court precisely the opposite.

danger that providing federal valuation relief would pose to state tax administration.[25]

2. Petitioner and the United States also rely on the fact that although various state taxing officials suggested amendments that would remove the uncertainty they perceived as to whether the proposed legislation would afford federal valuation review of railroad property, no such amendments were enacted by Congress. Pet. Br. 24; U.S. Br. 16. But while the Court should not adopt a statutory interpretation that Congress considered and rejected (*Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission*, 461 U.S. 190, 220 (1983)), there was no such "consideration" here, since none of these amendments were ever formally offered by Members of Congress or put to a vote. Such amendments must have been perceived as unnecessary, in light of the railroads' repeated assurances that the Act they sponsored was not intended to provide valuation relief.[26]

3. Petitioner also attacks Respondents' reliance on the statements quoted above from AAR representatives, whom they describe as "two individuals from the private sector," and whose testimony they suggest should "be given virtually no weight." Pet.

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[25] In the entire fifteen-year debate leading to adoption of the 4-R Act, only one railroad witness ever intimated that federal courts would have to review state valuation of railroad property under Section 306. During the hearings on the 1969 version of the bill, Broley E. Travis, a retired California tax assessor, suggested that federal courts would have to review valuation during the course of a Section 306 action. But as Mr. Travis himself qualified his remarks, he was speaking strictly as a technician, not an attorney. *Hearings on S. 2289* at 59. There is no reason to assume that Congress adopted Mr. Travis' views, in the face of contrary testimony from the railroads' official spokesmen during the very same hearings. *See* p. 17, *supra*; *see also Burlington N. R.R. v. Lennen*, 573 F. Supp. 1155, 1163 (D. Kan. 1982), *aff'd*, 715 F.2d 494 (10th Cir. 1983), *cert. denied*, 467 U.S. 1230 (1984) ("[T]he Senate Committee on Commerce rejected the viewpoint of Mr. Travis").

[26] *Cf. United States v. United Mine Workers*, 330 U.S. 258, 277 (1947) (rejection of amendment limiting the scope of proposed legislation does not indicate congressional intent where the sponsor of the legislation took the position that the amendment was unnecessary).

Br. 25. But the AAR representatives quoted above were not randomly-chosen members of the body politic expressing gratuitous views about legislation they knew nothing about. Instead, as we have shown, the Association of American Railroads (which both Messrs. Ogden and Lanier represented) suggested anti-discrimination legislation to the committee that drafted the Doyle Report, acted as the primary interest group in favor of the Act, and represented over 90% of the Act's primary beneficiaries, the railroads. *See Hearings on S. 927* at 5; *see also* pp. 12-18, *supra*. The AAR's views were listened to by Congress, acknowledged by the Act's opponents, and incorporated almost verbatim in congressional reports. *See* pp. 19-20, *supra*. Their statements as to what the Act would and would not accomplish are therefore entitled to great weight.[27]

4. Finally, Petitioner and the United States rely on the inclusion of the word "overvaluation" in a committee report on the House version of the statute. Pet. Br. 26-27; U.S. Br. 20. But this single word—unique in the 4-R Act's legislative history—will not bear the weight that Petitioner and its *amici* place upon it. To begin with, the language quoted by Petitioner and the United States is part of the House report; however, the House version of the statute was not enacted. Moreover, the House report also contained a much longer analysis of Section 306, which simply stated that the statute would proscribe the collection of any tax based either on a discriminatory assessment or a higher tax rate. H.R. Rep. No. 725, 94th Cong., 1st Sess. 77 (1975). This more detailed explanation of the statute contained no language indicating that the bill would provide federal valuation relief. Nor, of course, did the Senate committee report on the Senate version of

[27] A sponsor's interpretation of a bill is an "authoritative guide to the statute's construction." *Rice v. Rehner*, 463 U.S. 713, 728 (1983) (citation omitted). Given the legislative history described above, the railroad industry (and, in particular, its organized trade association, the Association of American Railroads) was certainly the primary "sponsor" of the 4-R Act. *Cf.* Posner, *Economics, Politics, and the Reading of Statutes and the Constitution*, 49 U. Chi. L. Rev. 263, 271-72 (1982) (statutes regulating transportation industry prime examples of "narrow interest group legislation"). Consequently, its pronouncements as to what the statute would mean if adopted should be given great weight.

the bill, which—unlike the House version—was enacted into law. *See* S. Rep. No. 499, 94th Cong., 1st Sess. 65-66, *reprinted in* 1976 U.S. Code Cong. & Admin. News 14, 79-80. Under these circumstances, the internally inconsistent House report cannot provide a sound basis for discerning the Act's meaning.[28]

For all these reasons, the effort of Petitioner and its *amici* to rewrite the legislative history of the 4-R Act must be rejected.

II

SOUND JUDICIAL POLICY AND CONCERNS FOR FEDERALISM WARRANT A NARROW CONSTRUCTION OF THE 4-R ACT

As this Court noted in *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, ___ U.S. ___, 92 L.Ed.2d 650, 659 (1986), jurisdictional statutes like the 4-R Act must be interpreted not only in light of Congressional intent, but also with due regard for "judicial power[ ] and the federal system." Like the 4-R Act's legislative history, these factors counsel against an expansive interpretation of the Act's jurisdictional provisions.

Petitioner and the United States argue that because railroad property is valued as a unit, railroad appraisal is no complex task and therefore will not burden the federal courts. But the catchphrase "unitary valuation" obscures a host of complex, troublesome and unresolved questions, the resolution of which ultimately depends on the judgment of assessing authorities, and not on the application of a standardized and well-established procedure. Doyle Report at 481. Because railroad property is almost never sold, its value must be derived indirectly from "other primary evidences of value," such as capitalized earnings, market prices of stock and debt, and the original or reproduction cost less depreciation of the railroad's assets. *Id.* at 455. How much weight to give

[28] When two committee reports conflict, this Court follows the report whose language tracks that of the statute. *See Japan Whaling Ass'n v. American Cetacean Soc'y*, ___U.S.___, 92 L.Ed.2d 166, 182 n.5 (1986). That is true of the Senate report in this case, and the longer analysis of the bill in the House report, but not the House report language relied on by Petitioner.

each of these factors in valuing any individual railroad is a matter of debate and judgment.

Moreover, the determination of each of the potentially applicable indicators of value raises numerous subsidiary questions. In order to use the "capitalized earnings" approach, the assessor must determine the amount of earnings to be capitalized. While deriving this figure is no small task,[29] "[t]he choice of a rate of capitalization is even more difficult . . . ." *Id.* at 476. Similarly, the "stock and debt method of appraisal" also raises complex questions. For example, this method requires appraisal of the "total market value" of the liabilities of a railroad, which in turn requires valuation of "all . . . claims against the assets, whether they be funded or unfunded, contingent or fixed, legal or equitable." *Id.* at 477.[30] The relevance of historical cost will vary from railroad to railroad, depending on factors such as "property deterioration . . . and obsolescence . . . which are not easily measurable." *Id.* at 456. Finally, even after an assessor has assigned a "full system value" to the railroad as an operating entity, the value then has to be divided between the various States in which the railroad does business. This task, says the Doyle Report, "is a very difficult practical problem . . . much like placing value on one of a pair of gloves." *Id.* at 481.

The claims made in the *Atchison* litigation, in which *amici* are defendants, establish beyond doubt that valuation litigation involves far more than the simple application of established standards. For example, in connection with the capitalized income approach to valuation, the railroad plaintiffs in *Atchison* have

[29] For example, the Doyle Report states that railway net earnings should be adjusted "to more accurately reflect actual circumstances as, for instance, provision for maintenance for railroads in receivership, or change in management which improves prospects on earnings, or tax accruals which may be distorted by reason of deficiency assessments, or extraordinary losses arising from the retirement of property not fully depreciated on the books." *Id.* at 476.

[30] Using the "stock and debt method" also raises questions concerning the period of time over which security values are to be averaged, and the effect on security prices of general economic conditions, market trends, and business booms and depressions. *Id.* at 478.

challenged the method used by the California State Board of Equalization ("SBE") of determining their income, as well as its selection of an appropriate capitalization rate. In regard to calculating income, the railroads quarrel with the SBE's decision to assume, for purposes of valuation, that they have a limited life rather than a perpetual income stream. They also challenge the SBE's characterization of funds spent on track and equipment replacement; the SBE's methods of estimating their income tax expenses; the method by which the SBE calculates anticipated benefits from rate increases; the SBE's method of determining land reversion values; the SBE's treatment of working capital; and the fact that the SBE factors state income taxes into the determination of enterprise income on a unitary basis rather than state by state.

Equally complex issues are advanced by the *Atchison* plaintiffs with respect to the stock and debt approach to valuing their property. Thus, the railroads have challenged the SBE's inclusion of accumulated deferred income tax credits and gross market value; its use of the "income influence" method in assigning portions of railroad holding company stock value to railroad company equity; and the SBE's choice of indicative stock price. They also challenge the SBE's use of the cost approach to valuation (*see* Doyle Report at 456-57), and seek to overturn various aspects of the SBE's methodology in apportioning the value of their property to the several States in which they operate.

The record in the *Atchison* case thus wholly undermines Petitioner's blithe assurance that valuation litigation under the 4-R Act "is unlikely to create any unusual difficulty for federal courts" because no "special expertise is necessary" to resolve such claims. Pet. Br. 32. To the contrary, the comprehensive critique of state-law valuation methodology that the railroads now say is required by the 4-R Act would be intensely factual and exceedingly complex.[31]

[31] Moreover, the California experience also contradicts the railroads' claims that they cannot get a fair hearing in state court on their overvaluation claims. Litigation has been filed in the California state courts raising most, if not all, of the claims advanced in the *Atchison* case. On December 19, 1985, the California Superior Court issued a

It would also, in the last analysis, substitute the judgment of the federal courts for that of the state taxing authorities. While Petitioner asserts that finding a railroad's true market value involves only a determination of an "objective economic fact[ ]" (*id.*), the Doyle Report properly recognized that determining the true market value of railroad property ultimately depends on the application of expert judgment.[32] If the interpretation of the 4-R Act advanced by Petitioner is accepted, ultimately the district courts will be required to substitute their inexpert judgment for the specialized skills of state taxing officials. *Amici* urge the Court to reject this interpretation.

III

THE INTERPRETATIONS OF THE 4-R ACT PROPOSED BY THE TENTH CIRCUIT AND THE SOLICITOR GENERAL SHOULD BE REJECTED

No doubt swayed by the enormous burden that entertaining overvaluation claims would impose on the federal courts, both the Tenth Circuit and the Solicitor General have proposed limiting constructions of the 4-R Act. The Tenth Circuit, first in *Burlington N. R.R. v. Lennen*, 715 F.2d 494 (10th Cir. 1983), *cert. denied*, 467 U.S. 1230 (1984), and then in this case, held that a railroad must make a "strong showing of purposeful overvaluation . . . with discriminatory intent" before a 4-R Act claim can be brought. Pet. App. 2a; 715 F.2d at 498. Similarly, the United States, while urging rejection of the Tenth Circuit's test, contends that overvaluation relief is available under the 4-R Act only if a State has "systematically" determined excessive values for railroad property. U.S. Br. 25 n.14. In our judgment, neither approach is correct, for both suffer from the same vice: lack of support in either the 4-R Act's language or its legislative history.

Notice of Intended Decision in favor of the railroad plaintiffs upholding virtually all of their claims of overvaluation.

[32] No "one method, or even combination of methods, can be reduced to a formula for assessment which will always, and for all conditions, give the nearest true value for a carrier system. . . . The valuation methods . . . are only means to inform the assessor in exercising his judgment expertly." Doyle Report at 481.

Neither the language nor the history of the 4-R Act offers the slightest indication that Congress intended to provide federal jurisdiction for some valuation claims, but not for others. Rather, that language and history demonstrate that, as the district court stated in *Lennen*, "[d]iscriminatory valuation of the railroads . . . was not the problem that Congress sought to remedy in the passage of Section 306." *Burlington N. R.R. v. Lennen*, 573 F. Supp. 1155, 1164, (D. Kan. 1982); *see Burlington N. R.R. v. Lennen, supra*, 715 F.2d at 497-98 ("[t]he history suggests that equalization, not valuation, relief was intended to be made available for the railroads"). The *Lennen* court's creation of an exception for intentional or retaliatory overvaluation is entirely the result of judicial invention, and should be rejected.

The same is true for the approach of the United States. Its proposed interpretation of the Act is similarly cut from whole cloth, since the sole support offered is a quotation from a previous brief filed by the Solicitor General. U.S. Br. 25 n.14. Moreover, any attempt to apply the United States' proposed construction of the Act would raise numerous practical problems.[33] For these reasons, we urge the Court to reject it.

CONCLUSION

Amici do not deny that the absence of federal jurisdiction to hear valuation claims leaves one respect in which the railroads might still find themselves subject to "unfair" (though not necessarily discriminatory) taxes—assuming, of course, that a state assessing agency has violated its own constitutional and statutory

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[33] The United States asserts that federal relief would not be available if a state simply makes "an error in reaching an excessively high value for [railroad] property," but that such relief would be available if the overvaluation results "from an assessment rule or methodology that—either on its face or as applied—systematically determines excessive values for rail property." U.S. Br. 25 n.14. What sort of "errors" fall into which category, however, is by no means clear. There is thus no doubt that adopting the interpretation of the 4-R Act advanced by the United States—which was undoubtedly conceived in an effort to spare federal courts some of the burden of valuation litigation—would result in more federal court lawsuits, rather than fewer.

obligations to determine "true market value" and that the state courts have failed to remedy the violation. The question, however, is whether Congress has directed the federal courts to entertain claims that such has occurred. The language and the legislative history of Section 306 make clear that it has not.

Nor is this the unjust or irrational result that Petitioner and its *amici* bewail. Prior to the 4-R Act, the federal courts had *no* power to intrude into *any* aspect of alleged unfair state taxation of railroads. When Congress finally did act, it tailored the statute to the problems it was told existed: inadequate equalization practices and discriminatory tax rates. To this date, Congress has yet to be told, much less to declare, that there is a problem with overvaluation of railroad property sufficient to warrant federal intrusion in this still more sensitive and difficult-to-administer area of state tax activity. Until Congress ordains otherwise, Petitioner must continue to pursue judicial review of valuation claims before the state administrative and judicial bodies, where they once were required to pursue all their state tax claims. For these reasons, the Court of Appeals' decision should be affirmed, on the ground that the 4-R Act does not provide a federal forum for claims of overvaluation of railroad property.

DATED: January 28, 1987.

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(Appendix A)

LIST OF *AMICI CURIAE*

County of Alameda
County of Amador
County of Butte
County of Calaveras
County of Colusa
County of Contra Costa
County of El Dorado
County of Fresno
County of Glenn
County of Humboldt
County of Imperial
County of Inyo
County of Kern
County of Kings
County of Lassen
County of Madera
County of Marin
County of Mendocino
County of Merced
County of Modoc
County of Monterey
County of Napa
County of Nevada
County of Orange
County of Placer
County of Plumas
County of Riverside
County of Sacramento
County of San Benito
County of San Bernardino
County of San Diego
City and County of San Francisco
County of San Joaquin
County of San Luis Obispo
County of San Mateo
County of Santa Barbara
County of Santa Cruz
County of Shasta
County of Sierra
County of Siskiyou
County of Solano
County of Sonoma
County of Stanislaus
County of Sutter
County of Tehama
County of Trinity
County of Tulare
County of Ventura
County of Yolo
County of Yuba